IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

WP(C).No. 20847 of 2007(F)

PETITIONER:

SURENDRAN, AGED 54 YEARS, S/O. KRISHNAN,
SUMESH BHAVANAM, VALLIKUNNAM, ALAPPUZHA DISTRICT.

BY ADV. SRI.R.REJI

RESPONDENTS:

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1. THE COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM.

2. THE ASSISTANT EXCISE COMMISSIONER,
ALAPPUZHA.

3. THE CIRCLE INSPECTOR OF EXCISE,
MAVELIKKARA.

4. THE PRESIDENT,
BHARANIKKAVU GRAMA PANCHAYAT, PALLICKAL P.O.,
ALAPPUZHA DISTRICT.

5. THE SECRETARY,
BHARANIKKAVU GRAMA PANCHAYAT, PALLICKAL P.O.,
ALAPPUZHA DISTRICT.

WP(C). NO. 20847/07 F

ADDL. R6. SIVAN, VAYALITHARA, MANJADITHARA P.O., MAVELIKKARA.

(ADDL. R6 IS IMPLEADED AS PER IA NO. 9889/07 DATED 23.8.2007).

R1 TO R3 BY GOVERNMENT PLEADER (SHRI P.K. RAVIKRISHNAN)
R4 & R5 BY ADV. SHRI K.V. ANILKUMAR.

ADDL. R6 BY ADV. GEORGE VARGHESE PERUMPALLIKUTTIYIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C). NO. 20847 OF 2007 F

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE EXTRACT OF LICENCE FOR T.S. NO.39/2007-2008 DATED 06.05.2007.

EXT.P2 TRUE COPY OF W.P.(C). NO. 14940/2007 DATED 10.5.2007.

EXT.P3 TRUE COPY OF THE INTERIM ORDER DATED 28.5.2007 IN W.P.(C). NO. 14940/2007.

EXT.P4 TRUE COPY OF THE REPORT SUBMITTED BY THE 1ST RESPONDENT DATED 28.6.2007.

EXT.P5 TRUE COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT DATED 27.6.2007.

EXT.P6 TRUE COPY OF THE STATEMENT ISSUED BY THE FOURTH RESPONDENT DATED 20.6.2007.

RESPONDENTS' EXHIBITS:

EXT.R5(A) TRUE COPY OF THE STATEMENT DATED 20.6.2007 FILED BY THE FIFTH RESPONDENT TO THE C.I. OF POLICE.

EXT.R6(A) TRUE COPY OF THE COMPLAINT SUBMITTED BY THE RESIDENTS OF THE COLONY TO THE DISTRICT COLLECTOR.

EXT.R6(B) TRUE COPY OF RATION CARD OF SOME OF THE RESIDENTS OF SCHEDULED CASTE FAMILIES IN THE COLONY.

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

W.P.C. NO. 20847 OF 2007 F

Dated this the 6th November, 2007

JUDGMENT

Petitioner is issued with Ext.P1 licence to conduct a toddy shop. Petitioner had approached this Court by filing Ext.P2 Writ Petition seeking police protection in the light of the obstruction, according to him, caused by a few local people along with some local goondas. A contention was taken that the site wherein the toddy shop is located is within the prohibited distance of a Scheduled Caste Colony. A Report was called for. Ext.P4 Report dated 28.6.2007 was produced in this Court in the Writ Petition seeking police protection. Therein, it is, inter alia, stated that the distance from the toddy shop to the nearest house in the Valavathara Colony is 55.6 metres. It is also stated in Ext.P4 that there are thirteen Scheduled Caste families residing in the said Colony. Ext.P5 is the Order dated 27.6.2007 which was one day prior to the date of Ext.P4 Report passed by the Excise Commissioner cancelling the licence

issued to the petitioner and directed him to find an alternate site as per Rules. The cancellation is premised on the Report of the Deputy Commissioner that the toddy shop of the petitioner is located in an objectionable site, namely Valavathara Scheduled Caste Colony situated at a distance of 55.6 metres. Petitioner challenges Ext.P5. Petitioner has also produced Ext.P6 which was issued by the fourth respondent Grama Panchayat to the effect that there is no such Colony as per the Development Plan.

2. I heard the learned counsel appearing for the parties. Learned counsel for the petitioner points out that the petitioner has invested huge amount. He submits that Ext.P5 order evidences cancellation of Ext.P1 licence and it was issued without affording an opportunity of hearing to the petitioner. Of course, learned counsel for the additional sixth respondent would point out that having regard to Ext.P4 Report, it is clear that there is a Scheduled Caste Colony within the prohibited distance and it is a futile exercise to remit the matter back. Learned counsel for the petitioner has a case that there is no

such Scheduled Caste Colony.

3. I would think that this is certainly a case where the petitioner ought to have been heard before an order cancelling the licence was issued. In such circumstances, I quash Ext.P5 and direct the first respondent to consider the matter afresh affording an opportunity of hearing to the petitioner and additional sixth respondent. In view of the fact that there is considerable urgency for the petitioner, as the petitioner cannot conduct the shop till a decision is taken by the Excise Commissioner afresh, the petitioner or his representative and the additional sixth respondent or his representative shall be present before the first respondent at 11 A.M. on 12.11.2007. The first respondent will proceed to hear them and take a decision in the matter in accordance with law within a period of one week thereafter. It is made clear that till a decision is taken as aforesaid, petitioner cannot continue functioning of the shop on the strength of Ext.P1 licence. It is also made clear that no notice need be issued to the petitioner or to the additional sixth

respondent by the first respondent.

The Writ Petition is disposed of as above.

K. M. JOSEPH, JUDGE

kbk.